

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re:

BKY 04-44990

*Patrick J. Smithwick,*

Chapter 13 Case

Debtor(s).

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**TRUSTEE'S RESPONSE TO MOTION TO REDUCE TIME TO FILE  
OBJECTION TO EXEMPTION**

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, makes the following response to the debtor's motion to reduce time to file objection to exemption (the "Motion").

2. The court will hold a hearing on the Motion on October 6, 2004, at 2:00 p.m., or as soon thereafter as counsel may be heard, in Courtroom 8 West, U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, MN.

3. The debtor's Chapter 13 plan was filed on September 14, 2004; therefore, according to 11 U.S.C. § 1326(a)(1), the first payment to the Trustee is due on October 14, 2004. The debtor has not yet made his first payment to the Trustee.

4. Although the Motion is styled as a motion "to obtain a certificate of exempt property on an expedited basis," in reality, it is a motion to reduce the time for filing objections to the debtor's claims of exemption under Bankruptcy Rule 4003(b).

5. Although it is not clear from the Motion, the property in which the debtor claims a homestead exemption exceeds the Minnesota statutory maximum of .5 acres for an urban homestead, according to a subsequent motion to convey real estate that the debtor has filed subsequent to the present Motion.

6. It is also unclear from the Motion why the period of time to object to exemptions must be reduced to a date *prior to* the date set for the debtor's meeting of creditors.

7. The debtor is not scheduled to appear for his meeting of creditors until 11:30 a.m. on October 20, 2004, which is *after* the time set for the hearing on this Motion.

8. The relief granted to the debtor should be contingent upon the debtor's required appearance at his meeting of creditors under 11 U.S.C. § 341(a). It should also be drafted so as to set the deadline for filing objections to exempt property for a date *after* the meeting of creditors, to give creditors an opportunity to examine the debtor as to the

*bona fides* of his claim of exemption. As drafted, the proposed Order in this case would simply set October 11, 2004 (which is a legal holiday) as the deadline for filing objections to the debtor's claims of exemption, regardless of whether the debtor actually appears and is examined under oath at his scheduled meeting of creditors on the morning of October 20, 2004.

9. A revised proposed order to this effect is attached hereto and served upon all interested parties herein.

10. The revised proposed order indicates that the Clerk may issue the certificate regarding property claimed as exempt on or after October 21, 2004.

WHEREFORE, the Trustee prays that the court enter an order in conformity with this Response.

Dated: September 29, 2004

Jasmine Z. Keller, Chapter 13 Trustee

/e/ Thomas E. Johnson

Thomas E. Johnson, ID # 52000

Margaret H. Culp, ID # 180609

Counsel to Chapter 13 Trustee

12 South 6<sup>th</sup> Street, Suite 310

Minneapolis, MN 55402-1521

(612) 338-7591

#### **VERIFICATION**

I, Thomas E. Johnson, being employed by Jasmine Z. Keller, Chapter 13 Trustee, declare under penalty of perjury that I have reviewed the foregoing and it is true and correct to the best of my knowledge.

Dated: September 29, 2004

/e/ Thomas E. Johnson

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**ORDER**

At Minneapolis, MN, \_\_\_\_\_, 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the debtor's motion to reduce the time for filing objections to the debtor's claims of exemption (the "Motion").

Appearances, if any, were noted in the minutes.

Upon the foregoing Motion, the response of Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), and all of the files, records and proceedings herein,

**IT IS ORDERED:**

1. The deadline to file any objection to the debtor's Schedule C – Property Claimed As Exempt is reduced to October 21, 2004, **unless**, on or before that date, the Trustee files and serves a notice, pursuant to Local Rule 2003-1, that the meeting of creditors under 11 U.S.C. § 341(a) has not been concluded.
2. If neither objections to the debtor's Schedule C – Property Claimed As Exempt nor a notice of nonconcluded meeting of creditors is filed on or before October 21, 2004, the Clerk of Bankruptcy Court is authorized to issue a certificate regarding exempt property on October 22, 2004.

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Robert J. Kressel  
United States Bankruptcy Judge

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 29, 2004, I served Trustee's Response to Motion to Reduce Time to File Objection to Exemption and proposed Order on the individual(s) listed below, in the manner described:

**By electronic means:**

United States Trustee  
1015 United States Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

**By delivery:**

Ian T. Ball, Attorney at Law  
326 Plymouth Building  
Minneapolis, MN 55402

**By first class U.S. mail, postage prepaid:**

Patrick J. Smithwick  
3634 Rainbow Drive  
Minnetonka, MN 55345

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 29, 2004

/e/ Thomas E. Johnson